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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 60.

MIKE MARVICH,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA and CLYDE I. PLUMMER, Warden, *et al.*,

Respondents.

Motion to Remand Cause and Affidavit in Support Thereof.

To the Honorable Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States:

In view of the insufficient and incomplete character of the existing state of the record in the above entitled cause, and in order that said record may be completed, the issues involved clarified, and all question removed as to the manner and method by which petitioner's conviction was obtained, respondents deem it appropriate and necessary that this proceeding be remanded to the Supreme Court

of the State of California for further proceedings on the petition for a writ of *habeas corpus;* and

Motion is hereby respectfully made and presented by counsel for the respondents that such disposition of the matter be made by this Honorable Court.

ROBERT W. KENNY,
Attorney General of the State of California,

EUGENE M. ELSON,
Deputy Attorney General,
Counsel for Respondents.

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THE PEOPLE OF THE STATE OF CALIFORNIA and CLYDE I. PLUMMER, Warden, *et al.,*

Respondents.

Affidavit of Eugene M. Elson.

State of California, County of Los Angeles—ss.

EUGENE M. ELSON, being duly sworn, deposes and says:

That he is a member of the bar of this Honorable Court and is now and at all times herein mentioned has been a Deputy Attorney General of the State of California, and that his office is located at 600 State Building, in the City of Los Angeles, State of California; and that he makes this affidavit in support of the motion of respondents to remand the above entitled cause to the Supreme Court of the State of California for further

consideration of the application of petitioner to that court for a writ of *habeas corpus*.

The record before this Honorable Court purporting to be a record of the proceedings in the State Court resulting in a judgment of conviction of petitioner is by no means a sufficient or complete record of such proceedings. Said completed record is available and is on file in your affiant's office and does not show nor is it the fact that the prosecution in said action, or at any stage of said proceedings, offered the witness Eddie Black knowing that he would give perjured testimony. The prosecutor in said case in the trial court has prepared an affidavit refuting the charges made against him by the affidavits of petitioner and said James W. Gibbons [Exhibits "E" and "F" to the petition for certiorari herein, R. 20-23] and is prepared to file the same with the Supreme Court of the State of California or testify before that court on the entire subject if and when the occasion demands.

The record on appeal in said case consists of 585 pages of Reporter's Transcript of testimony and discloses that in addition to the witness Eddie Black, 15 witnesses testified for the prosecution, and that besides the two victims involved in said proceedings, 6 other witnesses identified petitioner as the perpetrator of the crime charged. No claim is made by the petitioner in any of the proceedings before this Court, nor has the claim been made at any other time that any of said witnesses perjured themselves.

In view of the present incomplete state of the record before this Court, your affiant respectfully suggests that the ends of justice will best be served by remanding the case to the Supreme Court of the State of California for further consideration of the application for a writ of *habeas corpus*, a procedure heretofore followed by this Honorable Court in the case of *Frank S. Connor*, Petitioner, *v. The People of the State of California, et al.*, 309 U. S. 631, 60 S. Ct. 708 (1940), at which time the entire and complete record may be brought before that court together with such evidence, if any, supplementary thereto as may be necessary to enable that court to determine the issues involved.

EUGENE M. ELSON.

Subscribed and sworn to before me this ..... day of November, 1943.

ROBERT W. KENNY,
Attorney General of the State of California,

By FRANK RICHARDS,
Deputy Attorney General.